IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 8796 of 2004

Between:

Dr. Ramuni Venugopal S/o R. Vishwanatham,
R/o 10-1-80, V.R.R. Complex, sagar Road, Karmanghat, Hyderabad

..... PETITIONER

AND

1.The Commissioner of Police, Cyberabad, Basheerabagh, Hyderabad
2. The Station House Officer, Saroornagar P.s., Saroornagar, Hyderabad.
3. Dr. Katakam Narmada, W/o Dr. R. Venugopal, Department of Gynaecology & Obstetrics, Gates Head Hospital, New Castle NE 10, 9SB, United Kingdom Aslo at 12 A feels Dyke Court,
Gates Head New Castle NE, 10,9 SB United Kingdom.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus for the production of Miss Lahri aged 13 years and Master Ashish aged 7 years in the illegal custody of the 3rd respondent frothwtih.

Counsel for the Petitioner:MR.L.RAVICHANDER

Counsel for the Respondent Nos 1&2: THE ADVOCATE GENERAL

Counsel for Respondent No.3: None appeared.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

This Writ Petition was filed seeking Writ of Habeas Corpus against respondents 1 and 2 to take necessary steps to trace the whereabouts of the petitioner's minor children and to retrieve their custody from 3rd respondent and produce before the Court. Third respondent is the petitioner's wife. Petitioner has alleged that he and third respondent are medical doctors and were students of Osmania Medical College, and, having known each other from the same medical school, their marriage was performed on 3.3.1990. Two children were born to them on 12.6.1991 and 10.7.1997. Thus, as on the date of the filing of the Writ Petition, they were aged 13 years and 7 years respectively. Petitioner alleged that they were living happily, but had some differences. In the year 2003, respondent No.3 voiced a desire to go abroad for further studies to England, to which, petitioner had agreed and, rather, cooperated with her completely and encouraged her trip to England. On 31.12.2003, as per the petition allegations, third respondent left for United Kingdom for taking the M.R.C. O.G. examination and the PLAB examination. After the examination, she expressed her desire to stay there for finding a suitable job. Petitioner alleged that, to his surprise and shock, when he was away from home, he received a phone-call from 3rd respondent on 16.3.2004 that she arrived in India and she was taking children to UK and when he went to the school, he was told that children had been taken away by the third respondent from the school disclosing the school authorities that she is taking the children to England for further education. No complaint was lodged by the petitioner, at that stage. In order to bring the petition for Habeas Corpus for the abrupt removal of the children from his custody, petitioner alleged that on 3.5.2004, when he contacted the third respondent on phone, she informed that she had procured admission in a School in England. Thus, the petitioner filed this Writ Petition alleging that sudden and permanent placement of the children in foreign culture was detrimental to their interests, and, he has alleged that he is not disputing the right and the bona fides of the mother qua the two children. He further alleged that taking the children in her exclusive custody would be contrary to the law. Thus, he sought assistance of the Court in issuing directions against

Respondents 1 and 2 to procure the presence of the children stated to have been in the custody of the third respondent.

Notice was directed to be issued, pursuant to which, affidavit has been filed on behalf of the 2nd respondent, by the Sub-Inspector of Police, Saroornagar Police Station, stating that a complaint was received from the petitioner alleging that his father-in-law, mother-in-law and sister-in-law would be leaving the country to escape from any legal action to be taken. The Sub-Inspector further stated that the third respondent, wife of the petitioner, had already been staying in United Kingdom along with children, prior to the complaint. Therefore, the complaint of the petitioner was that the relatives of the 3rd respondent will not be permitted to leave the country, as otherwise, the legal action to be taken would be a futile exercise. The complaint was registered and investigation was taken-up.

In such like cases, where prior to the filing of the Writ Petition, to the knowledge of the petitioner, children had been taken away by their mother for further studies in United Kingdom, and, the children as on the date of the filing of the Writ Petition were not in India, we are of the view that no direction can be issued for production of children from the custody of the third respondent. Even the third respondent is not residing within the jurisdiction of this Court. Children are away and beyond the jurisdiction of this Court.

Learned counsel for the petitioner relied upon the decisions in **Gohar Begum v. Suggi, Veena Kapoor v. Varinder Kumar, Surinder Kaur v. Harbax Singh, Elizabeth Dinsha v. Arvand M.Dinshaw, Sarita Sharma v. Sushil Sharma, and, S.Rehan Fatima v. Syed Badinudin Pariviz** in support of his contention that Habeas Corpus Petition would be maintainable irrespective of the fact that the petitioner had an alternative effective remedy. But, in this case, it is not the question of maintainability of the Writ Petition, but, is a question of exercise of jurisdiction in respect of children and third respondent, who are not within the jurisdiction of this Court, and, for that reason, we would decline to entertain further jurisdiction in this matter, and, liberty is given to the petitioner to avail appropriate remedy in accordance with law. The Writ Petition, therefore, is dismissed. No costs.

_____

DEVINDER GUPTA, C.J.

08.11.2004.

_____

C.V.RAMULU, J.

VR.

To

1.The Commissioner of Police, Cyberabad, Basheerabagh, Hyderabad
2. The Station House Officer, Saroornagar P.S., Saroornagar, Hyderabad.

3. Two CCs to the Advocate-General, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.